BEFORE THE
MISSOURI BOARD OF PHARMACY
STATE OF MISSOURI

MISSOURI BOARD OF PHARMACY, Petitioner, v. MED-E-QUIP LOCATORS, INC., Respondent.	)))))))))	Case No. 2008-002633-V1

CONSENT ORDER

On September 11, 2009, the parties filed a Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Board of Pharmacy and Joint Stipulation and Disciplinary Order With Joint Stipulated Findings of Fact and Conclusions of Law. The Board's review of that document shows that the parties have settled this case, waived their right to a hearing before the Board, and agreed to a specified discipline. The Board finds that the facts stipulated are true. The Board concludes that the licensee is subject to discipline pursuant to the joint stipulation of facts and conclusions of law as set forth in the Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Board of Pharmacy and Joint Stipulation and Disciplinary Order With Joint Stipulated Findings of Fact and Conclusions of Law. The parties' joint stipulation of facts and conclusions of law are incorporated into this Consent Order, and the Board enters its findings consistent therewith.

ENTERED on September 28, 2009.

KIMBERLY A. GRINSTON
EXECUTIVE DIRECTOR
MISSOURI BOARD OF PHARMACY

Board Seal

BEFORE THE
STATE BOARD OF PHARMACY
STATE OF MISSOURI

MISSOURI BOARD OF PHARMACY,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 2008- 002633-V1
	)	
MED-E-QUIP LOCATORS, INC.	)	
	)	
Respondent.	)	

JOINT MOTION FOR CONSENT ORDER, JOINT STIPULATION OF FACTS, WAIVER OF HEARING BEFORE THE MISSOURI BOARD OF PHARMACY AND JOINT STIPULATION AND DISCIPLINARY ORDER WITH JOINT STIPULATED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Missouri Board of Pharmacy ("Board") and Med-E-Quip Locators, Inc. ("Respondent") waive the right to a hearing of the above-styled case before the Missouri Board of Pharmacy and jointly stipulate to the facts and consent to the imposition of disciplinary action against the drug distributor license of Respondent for violations as set forth below.

Respondent acknowledges that it has received and reviewed a copy of the complaint filed by the Missouri Board of Pharmacy in this case and the parties submit to the jurisdiction of the Board.

Respondent acknowledges that it understands the various rights and privileges afforded it by law, including the right to appear and be represented by counsel; the right to have a copy of the Complaint served upon it by the Missouri Board of Pharmacy prior to the entering of its order; the right to have all charges against it proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing

at the hearing against it; the right to present evidence on Respondent's own behalf at the hearing; the right to a decision upon the record by the Board concerning the charges pending against it; and the right to a ruling on questions of law by the Board. Being aware of these rights provided it by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Board of Pharmacy and Joint Stipulation and Disciplinary Order with Joint Stipulated Findings of Fact and Conclusions of Law ("Joint Stipulation and Disciplinary Order") and agrees to abide by the terms of this document, as they pertain to it.

Based upon the foregoing, the parties jointly stipulate to the following and request that the Missouri Board of Pharmacy adopt as its own the Joint Stipulated Findings of Fact and the Joint Stipulated Conclusions of Law as to the Board's Findings of Fact and Conclusions of Law.

JOINT STIPUALTION OF FACTS AND CONCLUSIONS OF LAW

1. The Missouri Board of Pharmacy ("the Board"), is an agency of the State of Missouri created and established by § 338.110, RSMo, for the purpose of administering and enforcing the provisions of Chapter 338, RSMo.

2. Respondent, Med-E-Quip, is licensed by the Missouri Board of Pharmacy as a drug distributor, as defined in § 338.330 RSMo. Respondent's license, numbered DD2003026499, is current and active as of the date of this Joint Stipulation and Disciplinary Order.

3. Robert A. Caples is the President and Manager-In-Charge of Med-E-Quip.

4. Med-E-Quip's permit was current and active at all times relevant herein.

5. Respondent Med-E-Quip has represented that it is involved in the purchase and sale of new and used infusion pumps and the resale of pre-packaged IV administration infusion pump sets. Respondent Med-E-Quip has further represented that it is not currently involved in the purchase, sale, or storage of prescription medications or IV fluids for human use.

6. On or about April 14, 2008, Respondent entered into a *Settlement Agreement Between State Board of Pharmacy and Med-E-Quip Locators, Inc.* ("*Settlement Agreement*") whereby Med-E-Quip's permit was placed on probation for a period of three (3) years expiring on or about April 28, 2011. A true and correct copy of the *Settlement Agreement* is attached hereto as Exhibit A and incorporated herein by reference.

7. The three (3) years probation was imposed, in part, due to Respondent's failure to timely notify the Board of a change in the manger-in-charge at Med-E-Quip.

8. Under the Settlement Agreement executed by Respondent on April 14, 2008, the terms of Respondent's three (3) year probation include the following provisions:

* * *

> 3. Licensee shall comply with all provisions of Chapter 338, Chapter 195, RSMo, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws . . .

* * *

> 7. Licensee's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Order.

9. On April 22, 2008, Respondent executed a Drug Distributor Location

Change Application which requested the Board's approval for a change in location of its facilities. The Drug Distributor Location Change Application was received by the Board on April 25, 2008.

10. 20 CSR 2220-5.020(6) provides that any new location be approved by Board inspectors if a drug distributor intends to change the location of its currently licensed facility.

11. The Board received a Drug Distributor Location Change Application from Med-E-Quip on or about April 25, 2008 showing the effective date of change to be April 1, 2008.

12. On or about May 22, 2008, Tom Glenski and Steve Smith, Inspectors for the Board, conducted a change of location inspection at Med-E-Quip's new location at 2505 Metro Blvd., Suite M, Maryland Heights, Missouri.

13. During this inspection, Inspectors Glenski and Smith discovered that Med-E-Quip began conducting business at the 2505 Metro Blvd., Suite M, Maryland Heights location some time during the third week of February, 2008.

14. On September 22, 2008, Med-E-Quip's Vice President, Mr. Pat Postal, admitted that Med-E-Quip started conducting business at its new location around the third week in February, 2008.

15. Med-E-Quip conducted business at its new location for approximately two (2) months prior to notifying the Board of its change of location.

16. Med-E-Quip did not notify the Board of its change in location prior to conducting business at the new location.

17. Med-E-Quip's failure to notify the Board of its change of location prior to

conducting business at the new location is in violation of 20 CSR 2220-5.020(6) which states in pertinent part:

> (6) If an individual or business entity operating a drug distributor facility changes the location of the facility either within the existing facility (structure) or to a new facility (structure), the facility shall not open for business at the new location until the board, its duly authorized agent or the Food and Drug Administration has inspected the premises of the new location and approved it and the facility has been in compliance with all state and federal drug laws pertaining to drug distribution. Upon this approval and receipt of a change of location fee, the board shall issue a license authorizing operation of a facility at the new location and the license shall bear the same number as the previous license. However, the license remains valid if the facility address changes, but not the location, and an amended license will be issued without charge under these circumstances.

18. Med-E-Quip's failure to notify the Board of its change of location prior to conducting business at the new location violates the terms of the April 14, 2008 *Settlement Agreement* in that Med-E-Quip failed to comply with all applicable drug rules and regulations by failing to comply with 20 CSR 2220-5.020(6).

19. A review of Med-E-Quip's receipt records was conducted by Board Inspectors which revealed that Med-E-Quip purchased and received infusion pumps and IV tubing from several different suppliers who were not licensed distributors with the State of Missouri.

20. Med-E-Quip's receipt records indicated the following information about its infusion pumps and IV tubing business:

Receive Date	Product	Supplier	PO Number
02/21/2008	CADD 6161	Simple Solutions 100 Miller St Suite 1 Blacksburg, VA 24060	10272
01/10/2008	Colleaque 3CX	Tri-Med 453 Callen Avenue Morgantown, WV 26501	10212
08/12/2008	Colleague 1,	Texus Medical	10740

	Colleague 3	2001 Franklin Ave. Waco, TX 76701	
07/17/2008	Abbott Encore	Universal Hospital Services 7700 France Ave South Suite 275 Edina, MN 55435	10714
04/22/2008	Baxter 6300, Baxter 6201	Quest Medical Supply 600 Sweetwater Club Circle Longwood, FL 32779	10502
03/31/2008	CADD 6161 VIP	Novatek Medical Rental Group 1609 West Wernsing Ave. Effingham, IL 62401	10382
06/06/2007, 07/10/2008	Braun Vista Basic	Northwest Florida Hematology & Oncology 11 West 23rd Street Suite C Panama City, FL 32405	9709
09/02/2008	Baxter 6301, Baxter 6201	Mike Mathis 615 Main Ave. North Magee, MS 39111	10774
08/26/2008	Abbott Encore	Auction: EBAY Pine Run Community 777 Ferry Road Doylestown, PA 18901	10768
07/22/2008	Baxter 6301, Baxter 6201	Ideal Medical Equipment 121 Milledge Ave. Monroe, GA 30655	10544
08/29/2008	CADD 6100 VIP	Inter Mountain Medical 779 South 200 East Suite A Salt Lake City, UT 84111	10792
05/21/2008	Sigma 8000, Sigma 8000 Plus	Good-Bye Auction 2669 NE Twin Knolls Dr. #208 Bend, OR 97701	10527A
03/17/2008	Abbott Plum XL3, Abbott Plum XLD	Global Medical Brokers 5104 Criterion Way Dublin, OH 43016	10255
04/18/2008	Sims Deltec AVI 200A	Freedom Medical, Inc. 219 Welsh Pool Rd Exton, PA 19341	10507
06/24/2008	Baxter PCA II	Farwest Medical 2130 82nd Dr. NE Everett, WA 08205	10531
12/22/2006	Horizon NXT	Firstenberg Machinery Company, Inc. 867 South 19th Street Richmond, CA 94894	8982
02/19/2008	Alaris Signature 7230	Equip Stat Medical Inc. 1461 Harbour Walk Road Tampa, FL 33609	10245
06/16/2008	Horizon NXT	Drand Medical 7633 Northwest 3rd Oklahoma City, OH 73127	10539
06/09/2008	Alaris Signature	Auction: Dotmed.com, Inc	10536

	7230, Alaris Signature 7130	29 Broadway Suite 2500 New York, NY 10006	
05/20/2008	Secure 3000ml dual chamber, 1500ml dual Chamber	Clinical Technology, Inc. One Corporate Center Broadview Heights, OH 44147	10456
04/18/2008	CADD 6101 VIP, Baxter AS 50	Auction: Centurion Service Group 1400 N 25th Ave. Melrose, IL 60160	10395
05/15/2008	Baxter 6200	Concord Parkway Animal Hospital 308 Concord Parkway North Concord, NC 28027	10355
07/08/2008	Baxter I Pump	BMX Medical, Inc. 1301 Cambridge Street, Suite 111A Minneapolis, MN 55243	10596
07/17/2008	Alaris Signature 7130E	Blue Lake Services 34201 Melinz Parkway, Unit B Eastlake, OH 44095	10719
07/17/2008	Alaris Signature 7130E	Biomedix Medical 205 Maple Lane Toughkenamon, PA 19374	10584
02/20/2008	Cadd 6101	Ardus Medical, Inc. 11297 Grooms Road Cincinnati, OH 45242	10282
04/07/2008	Alaris IVAC Medsystem 2863	Auction: GSA Auction VAMC 1030 Jefferson Ave. Memphis, TN 38104	10389
01/30/2008	Braun Vista Basic, Baxter 6200	BPAI LLC 901 Curtain Ave. Baltimore, MD 21218	10241
12/13/2007	Baxter AS 50	GVS-NY 46 Central Ave. Farmingdale, NY 11735	10176
03/07/2008	Braun Vista Basic, Sigma 6000+2.2 M	Arthur Sunkin, MD 3 Colonial Green Loudenville, NY 12211	10353
08/27/2008	Baxter AS 50	Anda Medical 21 Donnington Place Ottawa, Ontario K2H7K9	10780
07/25/2008	IMED PC-2TX	Auction: EBAY Lee Temple 2886 Magnolia Blossom Lane Marianna, FL 32446	10553A
07/08/2008	Abbott Plum A+	Auction: EBAY Matrix Medical 1936 Cedar Lake Parkway Minneapolis, MN 55416	10708
01/28/2008	Baxter Colleague CX	Auction: EBAY Sheila Gibbs POB 3441 Edgewood, NM 87015	10204
01/08/2008	Baxter 6201	Auction: EBAY	10157

09/10/2007	Baxter 6201	Auction: EBAY Tami & Joe Galipo 107 Scotsburg Drive Warner Robbins, GA 31088	9945
01/23/2008	Colleague 1	Auction: GSA VAMC Temple 819 Taylor Street Fort Worth, TX 76102	10238
06/12/2008	Deltec Legacy	Medical Solutions, Inc. 8406 Magnolia Ste. A Santee, CA 92071	10571-B
01/23/2008	Clear link Solution set	Auction: GSA VAMC Temple 819 Taylor Street Fort Worth, TX 76102	Provided free with PO 10238

21. None of the suppliers listed in the table set forth in paragraph 20 above are licensed or registered drug distributors in the State of Missouri.

22. Med-E-Quip's practice of purchasing infusion pumps and IV tubing from suppliers not licensed or registered by the Board is in violation of 20 CSR 2220-5.020(1) which states in pertinent part:

> (1) . . . No wholesale drug distributor with physical facilities located in the state of Missouri shall knowingly purchase or receive legend drugs and/or drug related devices from a wholesale drug distributor or pharmacy not licensed or registered by the board . . .

23. Med-E-Quip's purchase and receipt of infusion pumps and IV tubing from suppliers not licensed or registered by the Board after April 14, 2008 is in violation of the terms of the April 14, 2008 *Settlement Agreement* in that Med-E-Quip failed to comply with all applicable drug rules and regulations by failing to comply with 20 CSR 2220-5.020(1).

24. With regard to purchase orders no. 10272, 10255, 10282, 10527, 10395, 10355, and 10353 set forth in paragraph 20 above, these orders were shipped directly to Med-E-Quip's new facility at 2505 Metro Blvd, Suite M, Maryland Heights, MO 63040 prior to the change of location inspection on May 22, 2008.

25. With regard to purchase orders no. 10272, 10740, 10714, 10502, 10382, 10774, 10768, 10544, 10792, 10507, 10531, 10539, 10536, 10456, 10527, 10255, 10282, 10596, 10719, 10708, 10571 and 10353 set forth in paragraph 20 above, these orders were shipped directly to Med-E.Quip's new facility at 2505 Metro Blvd, Suite M, Maryland Heights, MO 63040 prior to the Board's approval of a change of location on August 21, 2008.

26. All of the equipment described by the purchase orders listed in paragraph 20 above were transferred to Med-E-Quip's new facility at 2505 Metro Blvd., Suite M, Maryland Heights, MO 63040 prior to the Board's approval of that site on August 21, 2008.

27. During the inspection on May 22, 2008, it was discovered that Med-E-Quip's facilities lacked any equipment to monitor temperature or humidity.

28. Med-E-Quip's lack of equipment to monitor temperature and humidity within the facility was a violation of 20 CSR 2220-5.030(3)(B) which states:

> (3) Minimum standards of practice for drug distributors shall include the following:
>
> > (B) The temperature of the facility where drugs are stored must be maintained thermostatically within temperature requirements as provided for by the manufacturer or the latest edition of the *United States Pharmacopeia* (USP). Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, logs, or all of these, shall be utilized to document proper storage of prescription drugs.

29. Med-E-Quip has, since the time of its May 22, 2008 inspection, remedied its violation of 20 CSR 2220-5.030(3)(B) by installing appropriate temperature and humidity controls at its facility.

30. Med-E-Quip's initial failure to maintain equipment to monitor temperature and humidity within the facility violated the terms of the April 14, 2008 *Settlement Agreement* in that Med-E-Quip failed to comply with all applicable drug rules and regulations.

31. During the inspection on May 22, 2008, it was discovered that Med-E-Quip did not maintain an alarm system for the facility.

32. Med-E-Quip's failure to equip the facility with an alarm system was a violation of 20 CSR 2220-5.030(3)(C)(13) which states:

> (3) Minimum standards of practice for drug distributors shall include the following:
>
> > (C) Appropriate housekeeping, sanitation, lighting, ventilation and humidity of all areas where drugs are stored must be maintained.
> >
> > > 13. All facilities shall be equipped with an alarm system to detect entry after hours.

33. Med-E-Quip has, since the time of its May 22, 2008 inspection, remedied its violation of 20 CSR 2220-5.030(3)(C)(13) by installing an appropriate alarm system at its facility.

34. Med-E-Quip's initial failure to equip the facility with an alarm system violated the terms of the April 14, 2008 *Settlement Agreement* in that Med-E-Quip failed to comply with all applicable drug rules and regulations.

35. Due to multiple violations of applicable rules and regulations identified during the May 22, 2008 inspection, Med-E-Quip failed to pass an inspection of its facility for a change in location until August 21, 2008.

36. Med-E-Quip conducted business at its new location for approximately six

(6) months before its new site was approved by the Board inspectors for operation.

37. The Board is authorized to impose additional discipline pursuant to Section 338.055.3, RSMo, which states in pertinent part:

> . . . The board may impose additional discipline on a licensee, registrant or permittee found to have violated any disciplinary terms previously imposed under this section or by agreement.

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of §621.045.3, RSMo (2000). This disciplinary order will be effective immediately upon the issuance of the Consent Order of the Missouri Board of Pharmacy without further action by either party.

1. Respondent's license as a drug distributor shall be placed on PROBATION for a period of five (5) years. The period of probation shall constitute the disciplinary period. The terms of discipline shall be as follows:

A. Respondent shall pay all required fees for licensing to the Board and shall renew its license prior to October 31 for each licensing year.

B. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State' here includes the State of Missouri and all other states and territories of the United States.

C. If, after disciplinary sanctions have been imposed, the Respondent fails to keep its drug distributor license current, the period of unlicensed status

shall not be deemed or taken as any part of the time of discipline so imposed.

D. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six months (due by each January 1 and July 1), beginning with whichever date occurs first after this Order/Agreement becomes effective, stating truthfully whether or not it has complied with all terms and conditions of its disciplinary order.

E. Respondent shall select an independent consultant for the purpose of reviewing and insuring all compliance measures are carried out in accordance with all applicable laws and regulations. Respondent shall submit documentation and credentials of its chosen consultant to the Board office for approval prior to the beginning date of probation. Said consultant shall submit a written plan to the board office outlining what procedures or changes in operation will be implemented and on what time table is proposed for completion. The consultant shall then provide ongoing reports to the Board office attesting to the drug distributor's compliance or noting deficiencies for each visit made. The visits and initial report shall be provided within sixty (60) days of the beginning of probation. Visits to the drug distributor to assess compliance will be completed at a minimum of a 6 month cycle and reports to the Board office will be provided once every 6 months throughout the disciplinary period. The consultant shall be hired at Respondent's expense.

F. Respondent shall make a representative of the drug distributor available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may

occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.

G. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of the disciplinary Joint Stipulation and Disciplinary Order.

H. The parties to this Joint Stipulation and Disciplinary Order understand that the Board of Pharmacy will maintain this Joint Stipulation and Disciplinary Order as an open record of the Board as provided in Chapters 324, 338 and 610, RSMo.

2. The parties agree that this Joint Stipulation and Disciplinary Order resolves all allegations contained in the complaint in this matter and none of those allegations will be the subject of any further litigation between the parties. The parties further agrees that this Joint Stipulation and Disciplinary Order and any statements contained therein may not be used for or constitute an admission or finding for any purpose other than to settle the disputes between the parties. The parties further agree that this Joint Stipulation and Disciplinary Order and any statements contained therein shall not be construed as an admission of any guilt or liability, civil or criminal, by Respondent.

3. The Joint Stipulation and Disciplinary Order does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 338, RSMo, by Respondent not specifically mentioned in this document.

4. Upon the expiration of the disciplinary period, Respondent's drug distributor license shall be fully restored if all requirements of law have been satisfied;

provided, however, that in the event the Board determines that the Respondent has violated any term or condition of this Joint Stipulation and Disciplinary Order, the Board may, in its discretion, vacate this Joint Stipulation and Disciplinary Order and impose such further discipline as the Board shall deem appropriate.

5. No additional order shall be entered by this Board pursuant to the preceding paragraph of this Joint Stipulation and Disciplinary Order without notice and an opportunity for hearing before this Board as a contested case in accordance with the provisions of Chapter 536, RSMo. If any alleged violation of this Joint Stipulation and Disciplinary Order occurred during the disciplinary period, the parties agree that the Board may choose to conduct a hearing before it either during the disciplinary period or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, may impose further disciplinary action. Respondent agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation and Disciplinary Order has occurred.

6. If the Board determines that Respondent has violated a term or condition of this Joint Stipulation and Disciplinary Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Joint Stipulation and Disciplinary Order in its determination of appropriate legal actions concerning that violation.

7. Each party agrees to pay all its own fees and expenses incurred as a result of this case and litigation.

8. The terms of this Joint Stipulation and Disciplinary Order are contractual, legally enforceable, binding and not merely recitals. Except as otherwise contained herein, neither this Joint Stipulation and Disciplinary Order nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

9. Respondent, together with its successors heirs and assigns, and its attorneys, do hereby waive and release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Joint Stipulation and Disciplinary Order. The parties acknowledge that this paragraph is severable from the remaining portions of this Joint Stipulation and Disciplinary Order in that it survives in perpetuity even in the event that any court of law deems this Joint Stipulation and Disciplinary Order or any portion thereof void or unenforceable.

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Board of Pharmacy and Joint Disciplinary Order with Joint Stipulated Findings of Fact and Conclusions of Law and to the termination of any further

proceedings before the Missouri Board of Pharmacy based upon the Complaint filed by the Petitioner in the above-styled action.

RESPONDENT

MED-E-QUIP LOCATORS, INC.

By: Robert A. Caples
Robert A. Caples
Manager in Charge

Date: 9-4-09

PETITIONER

MISSOURI BOARD OF PHARMACY

By:
Kimberly Grinston
Executive Director

Date: 9-11-09

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